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1 KEVIN V. RYAN (SBN 118321)
 2 United States Attorney
 2 JOANN M. SWANSON (SBN 88143)
 Chief, Civil Division
 3 OWEN P. MARTIKAN (SBN 177104)
 Assistant United States Attorney

4 450 Golden Gate Avenue, 10th Floor
 5 San Francisco, California 94102-3495
 Telephone: (415) 436-7241
 6 Facsimile: (415) 436-6748
 Email: owen.martikan@usdoj.gov

7 Attorneys for the Federal Defendants

8
 9 UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

10 SAN FRANCISCO DIVISION

11 MIGUEL GUERRERO and RAFAEL
 12 GUERRERO CARCAMO,

13 Plaintiffs,

14 v.
 15 UNITED STATES POSTAL SERVICE and
 16 UNITED STATES OF AMERICA

17 Defendants.

No. C 05-01596 EDL (ADR)

**STIPULATION FOR COMPROMISE
 SETTLEMENT AND RELEASE AND
 [PROPOSED] ORDER**

18 IT IS HEREBY STIPULATED by and between the undersigned parties and their
 19 attorneys, that this action be settled and compromised, as follows:

20 1. The United States shall pay to Plaintiffs Miguel Guerrero and Rafael Guerrero
 Carcamo and their attorney, Phil Allen, the collective sum of \$14,800.00 (fourteen thousand
 21 eight hundred dollars and no cents). Payment shall be made by check made payable to Miguel
 22 Guerrero, Rafael Guerrero Carcamo, and Phil Allen.

23 2. Payment of the above by the United States is in full and final settlement and
 24 satisfaction of any and all claims and demands which Plaintiffs Miguel Guerrero and Rafael
 25 Guerrero Carcamo have or may hereafter acquire against the United States of America and the
 26 other named defendants herein, or any of its departments, agents, servants, employees or
 27 attorneys, arising from the events described in Plaintiffs' pleadings in this action.

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 NORTHERN DISTRICT OF CALIFORNIA
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1 3. Plaintiffs' complaint against the federal defendants in this action shall be
2 dismissed with prejudice. In consideration of the terms enumerated herein and above in
3 paragraph 1, Plaintiffs Miguel Guerrero and Rafael Guerrero Carcamo agree that, within five
4 days from notification by the US Attorney's Office that the settlement amount is available,
5 Plaintiffs' counsel will execute and forward to Assistant United States Attorney Owen P.
6 Martikan for execution and filing with the court a stipulation for dismissal with prejudice in a
7 form mutually agreeable to the parties. AUSA Martikan will execute and file the stipulation of
8 dismissal within five days of his receipt thereof. On the date that the dismissal is filed, the
9 settlement amount shall be delivered to Plaintiffs' counsel.

10 4. Plaintiffs Miguel Guerrero and Rafael Guerrero Carcamo will accept the payments
11 described herein in full settlement and satisfaction of any and all claims and demands which
12 Miguel Guerrero and Rafael Guerrero Carcamo, their successors or assigns may now have or
13 hereafter acquire against the United States of America or any of its departments, agents, servants,
14 employees or attorneys, on account of the events described in Plaintiffs' pleadings in this action.

15 5. Plaintiffs Miguel Guerrero and Rafael Guerrero Carcamo agree to indemnify the
16 federal defendants for any and all liens, known or unknown, lodged against the settlement
17 agreement in this action.

18 6. Plaintiffs Miguel Guerrero and Rafael Guerrero Carcamo do hereby release and
19 forever discharge the federal defendants, the United States and any and all of its past and present
20 officials, employees, agents, attorneys, their successors and assigns, from any and all obligations,
21 damages, liabilities, actions, causes of actions, claims and demands or any kind and nature
22 whatsoever, whether suspected or unsuspected, at law or in equity, known or unknown, arising
23 out of the allegations set forth in Plaintiffs' pleadings in this action.

24 7. California Civil Code Section 1542 provides as follows:

25 A general release does not extend to claims which the creditor does
26 not know or suspect to exist in his favor at the time of executing
27 the release, which if known by him must have materially affected
his settlement with the debtor.

28 Plaintiffs Miguel Guerrero and Rafael Guerrero Carcamo have been apprised of the statutory

language of Civil Code Section 1542 by their attorney, and fully understanding the same, nevertheless elect to waive the benefits of any and all rights they may have pursuant to the provision of that statute and any similar provision of federal law. Plaintiffs Miguel Guerrero and Rafael Guerrero Carcamo understand that, if the facts concerning their injuries and the liability of the government for damages pertaining thereto are found hereinafter to be other than or different from the facts now believed by them to be true, this Agreement shall be and remain effective notwithstanding such material difference.

8. This Agreement may be pled and will serve as a full and complete defense to any subsequent action or other proceeding involving any person or party which arises out of the claims released and discharged by the Agreement.

9. Attorneys' fees and all costs shall be paid from, and not in addition to, the payments described in paragraph 1, above. It is also understood by and among the parties that pursuant to Title 28, United States Code, Section 2678, attorneys' fees for services rendered in connection with this action shall not exceed 25 percent of the amount of the compromise settlement.

10. This is a compromise settlement of a disputed claim and demand, which settlement does not constitute an admission of liability or fault on the part of Defendant United States of America, the federal defendants, or any of their agents, servants, employees or attorneys, on account of the events described in Plaintiffs' complaint in this action.

11. This instrument shall constitute the entire agreement between the parties, and it is expressly understood and agreed that the Agreement has been freely and voluntarily entered into by the parties hereto with the advice of counsel, who have explained the legal effect of this Agreement. The parties further acknowledge that no warranties or representations have been made on any subject other than as set forth in this Agreement. This Agreement may not be

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1 altered, modified or otherwise changed in any respect except by writing, duly executed by all of
2 the parties or their authorized representatives.

3 IT IS SO STIPULATED.

4 For Plaintiffs Miguel Guerrero and Rafael Guerrero Carcamo .

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6 DATED: 2/24/06

7 By: _____
8

PHIL ALLEN
Attorney for Plaintiffs

Miguel Guerrero

9 For The Federal Defendants.

10
11 DATED: 2/24/06

12 By: _____
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KEVIN V. RYAN
United States Attorney

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17 OWEN P. MARTIKAN
18 Assistant United States Attorney
19 Attorneys for Federal Defendants

[PROPOSED] ORDER

Pursuant to stipulation, IT IS SO ORDERED.

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21 DATED: Mar 7, 2006

Susan D. Loperte

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23 ELIZABETH D. LAPORTE
24 United States Magistrate Judge